

In re Interest of Becka P.

Caselaw No.

Nos. S-16-646 through S-16-648

Filed on

Tuesday, February 7, 2017

SUMMARY: Robert P. and Veronica M. appeal from orders of the county court for Garden County, sitting as a juvenile court, appointing an "educational surrogate" after Robert and Veronica refused to complete consent forms necessary to authorize speech and language and early childhood development assessments previously ordered by the court.

Robert and Veronica are the parents of Becka P., Robert P. Jr., and Thomas P. The children came within the meaning of Neb. Rev. Stat. § 43-247(3)(a), due to the faults and the habits of their parents in December 2015.

The orders of adjudication placed custody of the children with DHHS. The adjudication ordered a "language and speech assessment" for Becka and an "early childhood development assessment" for Robert Jr. and Thomas.

The parents appealed the adjudication orders in all three cases. On October 19, 2016, the Nebraska Court of Appeals affirmed the adjudications in an unpublished memorandum opinion.

When the parents' appeals were pending before the Court of Appeals, the county attorney charged with enforcing court orders filed an "Affidavit and Application for Order to Show Cause."

In May 2016, a show cause hearing was held and evidence introduced by the State showed that the parents had signed the informed consent forms needed by the ESU to proceed with the educational assessments, but had language that indicated that the parents' signatures were not voluntary. The language also indicated that the parents' had refused to consent to the release of information between the ESU and the programs it uses to conduct the evaluations. Consequently, the ESU did not consider the consent forms sufficient to permit the assessments to be performed and the evaluations to be completed.

The court declined to make any finding of contempt and instead decided to appoint an "educational surrogate" to authorize the necessary consents.

After the show cause hearing, the court entered an order in each child's case which provided that a particular attorney was "appointed as educational surrogate for the minor child herein and shall have all educational rights for the minor child."

Robert and Veronica appealed the May 2016 orders on the grounds that the juvenile court erred in ordering them to show cause why they should not be held in contempt and subsequently appointing an educational surrogate, while appeals of the adjudications were pending in the Court of Appeals. Additionally they appealed the appointment of an educational surrogate in a civil contempt proceeding because it did not give them an opportunity to purge their contempt by completing the assessment consent forms.

On the other hand, the state argued that the orders appointing an educational surrogate were not final, appealable orders.

Under Neb. Rev. Stat. § 25-1902, the three types of final orders which may be reviewed on appeal are: an order which affects a substantial right and which determines the action and prevents a judgment, an order affecting a substantial right made during a special proceeding, and an order affecting a substantial right made on summary application in an action after judgment is rendered.

A proceeding before a juvenile court is a "special proceeding" for appellate purpose. The issue is whether the order appointing an educational surrogate affected a substantial right.

To determine if a substantial right of a parent has been affected by an order in juvenile court litigation depends on both the object of the order and the length of time over which the parents' relationship with the juvenile may reasonably be expected to be disturbed.

Applying the current facts, neither the language of the orders appointing the educational surrogate nor the court's remarks on the record indicate a temporary interruption of the parents' rights to direct the education of their children. The court concluded that because there was no limit on the duration or scope of the educational surrogate's appointment, the orders were not temporary, but rather were final orders.

Robert and Veronica's main argument is that because the adjudication appeals were pending, the juvenile court lacked authority to take any action.

Under Neb. Rev. Stat. § 43-2, 106, "when a juvenile court proceeding has been instituted before a county court sitting as a juvenile court, the original jurisdiction of the county court shall continue until the final disposition thereof and no appeal shall stay the enforcement of any order entered in the county court."

The court concluded that while the orders of adjudication were pending on appeal, the juvenile court had continuing jurisdiction to issue and rule upon orders to show cause seeking enforcement of its previous orders requiring a speech and language assessment.

In addressing Robert and Veronica's argument about the orders appointing educational surrogate, the assignment of error is incorrect in their assumption. The record shows the court specifically declined to find either the parents or DHHS in contempt of court for failing to complete the necessary authorizations. Therefore the assignment of error is factually unsupported and lacks merit.

In conclusion, the orders of the juvenile court are affirmed.
